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09/438,645	11/12/1999	BRIAN GARRY JENKIN	JA999-715	9655

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EXAMINER

TODD, GREGORY G

ART UNIT	PAPER NUMBER
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2157

DATE MAILED: 04/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/438,645

Applicant(s)

JENKIN, BRIAN GARRY

Examiner

Gregory G Todd

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2-6, 10, 12-18 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-6, 10, 12-18, and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 January 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

This is a second office action in response to applicant's amendment filed, 30 January 2003, of application filed, with the above serial number, on 12 November 2000 in which claims 2-6, 10, 12-18, and 22 have been amended and claims 19-21, and 23-27 have been cancelled. Claims 2-6, 10, 12-18, and 22 are therefore pending in the application.

It is noted that the applicant refers to amended claims 1 and 10 in his response, however, claim 1 has been cancelled and so it has been assumed that any reference to amended method claim 1 shall be directed towards pending amended method claim 2. Further, applicant does not respond to previous claim 3 rejection and is hereby asked for a response to each claim rejection.

### ***Drawings***

1. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 31 January 2003 have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.
2. The drawings are objected to because amended Fig. 4B does not show how the first and second portion are to connect as the original drawing had (eg. 104 connecting to 106). A proposed drawing correction or corrected drawings are required in reply to

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the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "102" has been used to designate both server application and pre-runtime files. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

4. Claim 2 is objected to because of the following informalities: In line 11, "said server server actually" is suggested to be replaced with -- said server actually--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 10 recites the limitation "the first server" in line 22 of Exhibit "A". There is insufficient antecedent basis for this limitation in the claim. It should be noted, however, that the clean set of claims does not disclose this terminology and in fact only states "the server". Therefore, the examiner respectfully asks the applicant to verify that the clean and marked up versions of the amendment correlate with each other otherwise.

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7. Claim 10 recites the limitation " said client emulation server " in line 3, 13. There is insufficient antecedent basis for this limitation in the claim. It should be noted, however, that the marked up set of claims does not disclose this terminology and in fact only states "the client". Therefore, the examiner respectfully asks the applicant to verify that the clean and marked up versions of the amendment correlate with each other otherwise.

8. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Regarding Claim 14, there is no description of the client storing a performance data file.

### ***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 2-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Wang (hereinafter "Wang", 6,446,028).

11. As per Claim 2, Wang discloses a method for testing performance of a server running a chosen computing application, wherein Wang discloses:

(a) forming on a client a first collection of a number of live maps (packet requests sent real-time), wherein such a live map includes i) identification of a transaction for actual processing of the transactions by the server running a chosen computing application (at least col. 7, lines 4-18), and ii) data for the chosen application, and wherein the chosen computing application of the transaction for such a live map is the same (at least col. 3, lines 10-16, 43-57) for each of the live maps in the collection (at least col. 2, lines 6-16; col. 5, lines 9-26);

(b) transmitting a first processing load from the client to the server running said computing application, wherein the processing load includes the first collection of the number of said live maps for a plurality of said transactions (server processing request consisting of multiple packets) (at least Fig. 6; col. 6, lines 48-63);

(c) measuring one or more performance criteria resulting from said server actually processing said load, wherein the measuring is performed by the client or the server (at least Fig. 7; col. 2, lines 17-29; col. 7, lines 19-30; col. 5, lines 27-55); and

(d) changing the first collection of live maps and transmitting a next processing load from the client to the server, the next processing load including the changed collection of live maps in order to selectively vary said processing loads, wherein the changing includes changing the number of said live maps and types of said transactions in the first collection of live maps transmitted to said server, and wherein said measuring step (c) is repeated for the next processing load (processing additional database queries via server requests from the client) (at least col. 8, lines 21-31).

12. As per Claim 3.

(e) comparing performance criteria against predetermined performance measures to determine whether server's capacity is satisfactory (overall performance monitoring) (at least col. 1, lines 31-46, 56-60; col. 4, lines 28-32).

13. As per Claim 4.

performance criteria include average response time for a transaction within such a load (approximate total transit time) (at least Fig. 7; col. 2, lines 17-29).

14. As per Claim 5.

performance criteria include the proportion of server CPU time taken by a transaction of such a load (server processing time) (at least Fig. 7; col. 7, lines 19-30).

15. As per Claim 6.

wherein step (c) comprises for each transaction within said load, returning a result to said client (at least Fig. 5); and

measuring, by said client or by said server, the one or more performance criteria responsive to the processing of said load by said server (at least Fig. 7; col. 2, lines 17-29; col. 7, lines 19-30; col. 5, lines 27-55).

### ***Claim Rejections - 35 USC § 103***

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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17. Claims 10, 12-18, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang (hereinafter "Wang", 6,446,028) in view of Chen et al (hereinafter "Chen", 5,812,780).

18. As per Claim 10, Wang discloses a system for testing server performance, wherein Wang discloses:

- (a) a server running a chosen computing application (at least col. 3, lines 43-57);
- (b) wherein a live map includes i) identification of a transaction for actual processing of the transactions by the server running the chosen computing application (at least col. 7, lines 4-18), and ii) data for the chosen application, and wherein the chosen computing application of the transaction for such a live map is the same (at least col. 3, lines 10-16, 43-57) for each of the live maps in the collection (at least col. 2, lines 6-16; col. 5, lines 9-26); and
- (c) a communications connection between said client and said server (at least col. 3, lines 43-47), wherein said client is operable to transmit a first processing load to said server via said communications connection, the processing load including the first collection of said live maps for a plurality of said transactions, said server is operable to actually process said load (server processing request consisting of multiple packets) (at least Fig. 6; col. 6, lines 48-63), wherein said server or client but not necessarily both the server and client, is operable to measure one or more performance criteria resulting from the server processing said load (at least Fig. 7; col. 2, lines 17-29; col. 7, lines 19-30; col. 5, lines 27-55), and wherein said client is further operable to change the first



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collection of live maps and transmit a next processing load to the server. the next processing load including the changed collection of live maps, in order to selectively vary said processing loads, wherein the changing includes changing the number of said live maps and types of said transactions in the first collection of live maps, and the first server or client is operable to repeat the measuring for the next processing load (processing additional database queries via server requests from the client) (at least col. 8, lines 21-31).

Wang fails to explicitly disclose (b) a client representing a plurality of individual client computing stations, said client including a first collection of a number of live maps. However, the use and advantages for using such a simulation model is well known to one skilled in the art at the time the invention was made as evidenced by the teachings of Chen. Chen discloses a single computer/workstation acting as multiple systems and requests under a simulation (at least Chen col. 4, lines 34-51). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the use of Chen's single workstation representation with Wang's collection of live maps (at least Wang col. 2, lines 6-16; col. 5, lines 9-26) because this would ease the process of testing server performance by having a single system acting as multiple systems when multiple systems are not an alternative due to expenses or unforeseen client expansion.

19. As per Claim 12

wherein said server compares said measured performance criteria against predetermined performance measures to determine whether the server has satisfactory

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capacity (overall performance monitoring) (at least col. 1, lines 31-46, 56-60; col. 4, lines 28-32).

20. As per Claim 13.

wherein said server stores a file of said performance data measures (measurement database) (at least Fig. 9).

21. As per Claim 14.

wherein said client stores a file of said performance data measures (client measurement stub code) (at least Fig. 3).

22. As per Claim 14.

server produces an output representing performance data measures.

23. As per Claim 15.

wherein said performance data criteria includes the average response time for a transaction within one of said loads (approximate total transit time) (at least Fig. 7; col. 2, lines 17-29).

24. As per Claim 16.

wherein said performance data criteria includes the proportion of server CPU time taken by such a transaction of said loads (server processing time) (at least Fig. 7; col. 7, lines 19-30).

25. As per Claim 17.

wherein said server has connection to one or more database servers, said database servers being operable to execute portions of said load transactions (at least Fig. 5, 9).

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26. As per Claim 18.

wherein said server comprises a plurality of servers, and each of said server plurality has connection to one or more database servers, said database servers being operable to execute portions of said load transactions (at least Fig. 5, 9; col. 11, lines 1-2).

27. As per Claim 22.

at least one database in communication with said server (at least Fig. 5, 9).

### ***Response to Arguments***

28. Applicant's arguments filed 30 January 2003 have been fully considered but they are not persuasive. The applicant argues, substantially, that a.) Wang does not suggest that the client forms a specific collection of information identifying transactions and including data required for the transactions; also, that the server or client can perform the measuring of performance criteria; and b.) Wang does not suggest the transactions of the live maps being for the same computing application.

In response to a.): Wang clearly discloses the client application sending a live server request included in a packet of data to be sent over a network, the request inherently containing a specific collection of information identifying transactions and including data required for the transactions (at least col. 7, lines 4-18). This also clearly shows the use of Wang having a "live" collection of information in that the client requests are real and not sent out in a simulation environment. Wang also discloses that the measurement monitor can be part of the server configuration via mirroring,

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spanning, etc (at least col. 5, lines 27-55), as it is understood a server often consists of a collection of routers, hubs, switches and server computers and cannot act alone.

In response to b.): Wang clearly discloses the server application being the SAP R/3 server application (at least col. 3, lines 10-16, 43-57), but also states it could be any application and is not limited to the SAP R/3. Also, that the client uses a similar associated SAP R/3 client application program. Thus the performance of the server is measured and monitored with the same server application as newly amended by the applicant.

### ***Conclusion***

29. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

30. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Baghai et al, Caccavale et al, Davies et al, Sherman et al, Chen et al, Wagle, Dantressangle, Braddy, Congdon, Hoyer et al, Eilert et al, and Richardson are cited for disclosing pertinent information related to the claimed invention. Applicants are requested to consider the prior art reference for relevant teachings when responding to this office action.

31. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory G Todd whose telephone number is (703)305-5343. The examiner can normally be reached on Monday - Friday 9:00am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (703)308-7562. The fax phone numbers for the organization where this application or proceeding is assigned are (703)746-7239 for regular communications and (703)746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-3900.

gt  
March 27, 2003



**SALEH NAJJAR**  
**PRIMARY EXAMINER**